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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
Office of Secretary

In the Matter of)	
)	
Geographic Partitioning and Spectrum)	WT Docket No. 96-148
Disaggregation by Commercial Mobile)	
Radio Service Licensees)	
)	
Implementation of Section 257 of the)	GN Docket No. 96-113
Communications Act – Elimination of)	
Market Entry Barriers)	

OPPOSITION OF GTE SERVICE CORPORATION

GTE Service Corporation on behalf of its telephone and wireless companies ("GTE"), pursuant to Section 1.45(d) of the Commission's Rules, hereby files its opposition to the Motion for Stay Pending Judicial Review filed by the Rural Telecommunications Group ("RTG") in the above-captioned proceeding.¹

The RTG asks the Commission to stay enforcement of the Federal Communications Commission's ("FCC" or "Commission") *Report and Order and Further*

¹ Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, WT Docket No. 96-148, Implementation of Section 257 of the Communications Act – Elimination of Market Entry Barriers, GN Docket No. 96-113, Motion for Stay Pending Judicial Review (filed February 20, 1997 by the Rural Telecommunications Group) (hereinafter "Motion").

Notice of Proposed Rulemaking released on December 20, 1996.² The *R&O*, *inter alia*, modifies Section 24.714 of the Commission's Rules to remove the requirement that an applicant for a partitioned broadband personal communications service ("PCS") license must be a rural telephone company. The RTG takes exception to the Commission's rule change and filed a petition for review of the *R&O* with the United States Court of Appeals for the District of Columbia Circuit on February 5, 1997. The RTG asks the Commission to stay the effectiveness of the *R&O* pending court review of the *R&O*. In the alternative, the RTG asks the Commission to stay the *R&O* pending FCC consideration of a petition for reconsideration filed by the National Telephone Cooperative Association and the Independent Alliance on February 5, 1997. That petition raises the same issue as the RTG appeal.

GTE is a holder of three broadband PCS licenses. GTE has been an active participant in the above-captioned docket and supported the FCC's decision to eliminate the rural telephone company requirement for partitioning broadband PCS licenses. GTE believes that the Commission should deny the *Motion* because the RTG has failed to satisfy the criteria for granting a stay.

I. Discussion

As indicated in the *Motion*, pursuant to the long-standing test for evaluating a stay pending judicial review, in order to succeed the movant must show that: (1) it is

² Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, WT Docket No. 96-148, Implementation of Section 257 of the Communications Act – Elimination of Market Entry Barriers, GN Docket No. 96-113, *Report and Order and Further Notice of Proposed Rulemaking* (released December 20, 1996) (hereinafter "*R&O*").

likely to succeed on the merits of the appeal; (2) it will likely suffer irreparable harm if a stay is not granted; (3) others will not be harmed if a stay is granted; and (4) the public interest favors a stay. The RTG fails to meet each element of this test.

A. Likelihood of Success on the Merits

The RTG argues that the *R&O* violates Section 309(j) of the Communications Act requiring the Commission to design competitive bidding procedures to disseminate licenses in accordance with four objectives. In particular, the RTG argues that by eliminating the exclusive right of rural telephone companies to obtain partitioned broadband PCS licenses, the FCC has violated its statutory obligation to (1) provide for the development and rapid deployment of new technologies, products, and services to persons residing in rural areas;³ (2) disseminate licenses to a wide variety of people including rural telephone companies;⁴ and (3) ensure that rural telephone companies are given the opportunity to participate in the provision of spectrum-based services.⁵ RTG's success on the merits, therefore, depends on the viability of these arguments.

GTE believes that the FCC's *R&O* did not violate any of the cited statutory provisions. As an initial matter, GTE notes that the provisions cited by the RTG place obligations upon the FCC only with respect to design of competitive bidding procedures. The rule that the RTG seeks to overturn, however, concerns geographic

³ *Motion* at 11-15, *citing* 47 U.S.C. § 309(j)(3)(A).

⁴ *Motion* at 6-11, *citing* 47 U.S.C. § 309(j)(3)(B).

⁵ *Motion* at 6-11, *citing* 47 U.S.C. § 309(j)(4)(D).

partitioning of broadband PCS licenses, not competitive bidding. Accordingly, the cited provisions cannot be the basis for overturning the allegedly offensive rule.

Even if the FCC were required to adopt partitioning rules in accordance with the competitive bidding provisions of Section 309(j), GTE believes it has done so. With respect to RTG's argument that the Commission has failed to provide for the development of broadband PCS services in rural areas, the RTG's argument makes no sense. The RTG argues that because the FCC has stated that rural telephone companies, by virtue of their existing infrastructure, are well suited to introduce PCS services rapidly into rural areas, the Commission should limit partitioning only to such entities. GTE agrees that rural telephone companies are well suited to provide PCS services in rural areas. However, GTE feels strongly that competition is the best method of ensuring that new products and services are brought to all areas, including rural ones. As the FCC recognized in the *R&O*, allowing only rural telephone companies to obtain a partitioned broadband PCS license limits the number of entities that might bring new products and services to rural areas and therefore is contrary to the objective set forth in Section 309(j)(3)(A).⁶

With respect to the argument that the FCC has failed to provide sufficient opportunities to rural telephone companies, the RTG also fails to prove its point. First, as the FCC noted in the *R&O*, the Commission has provided opportunities for rural

⁶ *R&O* at 13-14.

telephone companies by making them eligible to participate in the entrepreneur block broadband PCS auctions.⁷

Second, as the Commission has noted in previous decisions in this docket and elsewhere, Section 309(j) requires the FCC to design competitive bidding to further a number of objectives in addition to those listed by the RTG.⁸ Thus, the Commission is also charged with recovering for the public a portion of the value of the public spectrum resource, and ensuring the efficient use of the electromagnetic spectrum. The Commission has stated previously, in the context of reviewing its policies to promote diversity of ownership, that “[w]e do not believe the statute further requires the Commission to promote diversity at the cost of delaying much-needed service that could otherwise be provided to the public.”⁹ GTE agrees with the Commission’s assessment in the *R&O* that it has provided opportunities for rural telephone companies and properly balanced each of the statutory objectives. GTE believes that the reviewing court will also find that the Commission has satisfied its statutory requirements and that the RTG will not succeed on the merits.

B. Irreparable Harm to the RTG

The RTG argues that it will be irreparably harmed if entities other than rural telephone companies are allowed to compete for and obtain partitioned PCS licenses.

⁷ *Id.* at 13.

⁸ *Id.* at 13-14; Deferral of Licensing of MTA Commercial Broadband PCS, PP Docket No. 93-253, ET Docket No. 92-100, *Memorandum Opinion and Order*, (released April 1, 1996) (hereinafter (“*MO&O*”).

⁹ *MO&O* at 7-8.

The RTG argues that once a non-rural telephone company invests money in a partitioned license, the Commission will be prejudiced to decide in favor of allowing the investing party to continue to hold the license over parties that have made no such investment.¹⁰

GTE generally agrees that once a licensee has invested in a license and in facilities to provide a service over licensed spectrum, there is very little the FCC can or should do to remove the license from the license holder. GTE does not agree, however, that allowing others to compete with rural telephone companies for partitioned licenses will irreparably harm any rural telephone company. First, the adopted rule change does not prevent RTG's members from pursuing a partitioned license. Second, rural telephone companies' advantage based on their infrastructure in place will presumably position them well to compete with any rival applicants that materialize. Third, at most, competing with non-rural telephone companies will only affect the price paid for a partitioned license. The loss of money is easily repaired and thus cannot be the basis of an irreparable harm claim.

C. Harm to Others

The RTG represents that issuing the stay will merely preserve the status quo and not harm the public or other interested parties.¹¹ GTE disagrees. Interested parties will be harmed because maintaining the existing rule will deny entities other than rural telephone companies from pursuing business interests that the rule change would allow

¹⁰ *Motion at 21-22.*

¹¹ *Id. at 23-24.*

them to pursue. Staying the effective date of the rule change will also harm entities holding broadband PCS licenses. Such entities may be harmed either by denying them opportunities to sell part of the license they hold, or by artificially holding down the price of a partitioned license by suppressing demand for that license. Finally, as noted above and below, the public will be harmed by limiting the number of entities that might bring new products and services to undeveloped or underdeveloped areas.

D. Public Interest

The RTG claims that the public interest would be served by granting the stay. It argues that the cost to RTG of opposing non-rural telephone company partitioning applications and the cost to Commission of processing such applications would harm the public. It argues, further, that rural America will be harmed because licenses would be partitioned to entities that have no desire to provide service to rural areas. It contends that non-rural telephone companies may obtain partitioned licenses and provide service only to densely populated areas leaving rural areas undeveloped.¹²

Again, GTE believes the RTG's arguments miss the mark. First, the cost to RTG or to the Commission in considering applications that may later prove unacceptable is not a significant enough public detriment to warrant the extraordinary measure of a stay of the R&O. Second, as noted above, relaxing the eligibility requirements for broadband PCS partitioning is likely to speed the delivery of new products and services to rural areas, rather than slow it as the RTG suggests. RTG's claim that non-rural telephone companies will acquire license territory through partitioning yet fail to

¹² *Motion at 24-25.*

develop the rural parts of the territory is completely unfounded. Speeding delivery of services to undeveloped parts of a license area is exactly what partitioning was designed to address. Partitioning enables auction winners that cannot immediately build-out parts of the license area to sell the rights to provide service in those areas to entities that can develop them more quickly. There is absolutely no need or incentive for any entity to purchase a larger territory through partitioning than it plans to develop. Accordingly, allowing the proposed rule to take effect will serve the public interest by increasing the number of potential applicants that might bring service to rural areas.

II. Conclusion

For the reasons stated above, GTE believes that the RTG has failed to satisfy the test for obtaining a stay pending judicial or FCC review. Accordingly, the FCC should deny the RTG's *Motion*.

Respectfully submitted,

GTE Service Corporation and its telephone and
wireless companies

By Andre J. Lachance

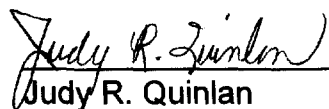
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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Opposition of GTE Service Corporation" have been mailed by first class United States mail, postage prepaid, on February 27, 1997 to all parties of record.


Judy R. Quinlan